

The mission of the Charitable Trusts Unit (the Unit) is to protect the integrity of the charitable sector in the State of New Hampshire through effective registration, education and enforcement. During the biennium, the Unit registered the highest number of charities in its history and the value of the charitable assets in New Hampshire was estimated to exceed \$12.2 billion dollars. The charitable sector in New Hampshire remains strong, diverse and responsive to the growing demands placed upon the sector.

This part of the report starts with a review of significant developments during the biennium and concludes with one of the many charities that is devoted to preserving New Hampshire traditions.

### *Recent Developments*

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Although the charitable sector is now being subject to tough scrutiny nation-wide by the U.S. Senate Finance Committee, the Charitable Trusts Unit in New Hampshire began a collaborative joint venture with major New Hampshire charities to promote greater self-scrutiny and self-reform by those charities operating in this state. The Unit has also expanded its efforts to educate charities in this state on their fiduciary obligations and has helped conduct seven “listening sessions” throughout the state to discuss ethical and legal issues.

During the biennium, the Unit dealt with a series of significant nonprofit matters, including (a) legislation requiring the largest charities to make their audited financial statements available to the public and legislation adopting a major new Uniform Trust Code; (b) cooperation with the Legislature on issues relating to

nonprofit gambling statutes; (c) scrutiny of legal issues relating to St. Paul’s School; (d) obtaining major funding to review compliance with and consider initiatives relating to the state’s community benefits statute; and (e) scrutiny of the mergers and consolidations of nonprofit health entities.

### **Metrics: The Upward Trajectory Uninterrupted**

The number of charities registering with the Unit reached the highest levels ever during the biennium. As of June 30, 2005, the total number of charitable trusts registered in New Hampshire was 5,811, a figure that does not include testamentary trusts (of which there were approximately 500 registered). Consequently, the proliferation of charities that began in the mid-1990’s continues its upward trajectory uninterrupted. This proliferation points to a healthy, diverse and dynamic sector in the state.

The value of the registered charities native to New Hampshire is estimated by the Urban Institute to be \$12.2 billion dollars. This figure is conservative, however, and does not include the value of assets held by religious organizations, municipal trusts, and the smallest charities in this state, all of which would significantly increase the valuation of charitable assets well beyond \$12.2 billion.

The Unit is now staffed with one attorney (the Director of Charitable Trusts), one registrar, one paralegal, one administrative assistant and one records control clerk.

### **Outreach**

Educational Initiatives (a Growing Imperative). Given the continued proliferation of charities under its scrutiny, the Unit has increased its commitment to educating the charitable sector

on legal compliance, ethical behavior, excessive compensation, internal controls, and other major issues. The Unit has engaged the public in a variety of ways, including:

1. educational forums for the trustees of cities and towns;
2. sessions sponsored by the New Hampshire Bar Association or the National Association of Attorneys General (NAAG) on the newly-adopted Uniform Trust Code, End-of-Life issues, and charitable regulation generally;
3. workshops offered with the New Hampshire Center for Nonprofits, the Governor’s Annual Conference on Volunteerism, the United Way, and the National Business Institute, among others; and
4. articles in the *New Hampshire Bar Journal* and the *Nonprofit Quarterly*, dealing with Sarbanes-Oxley and the recommendations being made to the United States Congress for reform of the charitable sector.

Members of the Unit have met with the CEOs, governing boards and staff members of nonprofit entities to discuss fiduciary responsibilities, community benefits, governance and other issues. In addition, the Unit participated in one of the workgroups organized by Independent Sector that submitted its report to U.S. Senate Finance Committee. The full report is available at [www.independentsector.org](http://www.independentsector.org).

### **The Excellence in Governance Project**

The Unit cooperated in a joint venture with the New Hampshire Charitable Foundation and 20 other major New Hampshire

charities to discuss legal and ethical issues—and how to help the charitable sector achieve excellence in this state. The 21-member work group held 7 listening sessions throughout the state, prepared a legal compliance checklist for charities, and published a new “Guidebook for Directors and Officers” for distribution throughout the state. This initiative was included in the report made by Independent Sector to the U.S. Senate Finance Committee, referenced above.

### Statutory Mandates

The laws governing charitable trusts in New Hampshire are complex and the chart to the right is a general representation of some of the major laws.

The Director of Charitable Trusts (the Director) is responsible for the supervision and enforcement of charitable trusts and charitable solicitations. The Director is a necessary party to all judicial proceedings that affect the purposes of a charitable organization, whether in Probate Court or Superior Court.

In terms of statutory mandates the principal functions of the Unit include:

- Enforcement of charitable trusts in New Hampshire under the authority of RSA 7:19-32 and the common law;
- Review all healthcare mergers and acquisitions involving non-profit institutions (RSA 7:19-b);
- Licensing of professional fundraisers soliciting donations from New Hampshire citizens for charitable purposes (RSA 7:28);
- Enforcement of games of chance (RSA 287-D);
- Monitoring the issuance of charitable gift annuities (RSA 403-E);
- Cooperating with the Pari-Mutuel Commission in enforcing

the gaming laws relating to Bingo and Lucky 7's;

- Cooperating with the Criminal Bureau in investigating allegations of criminal activities by officers and directors of charitable trusts.

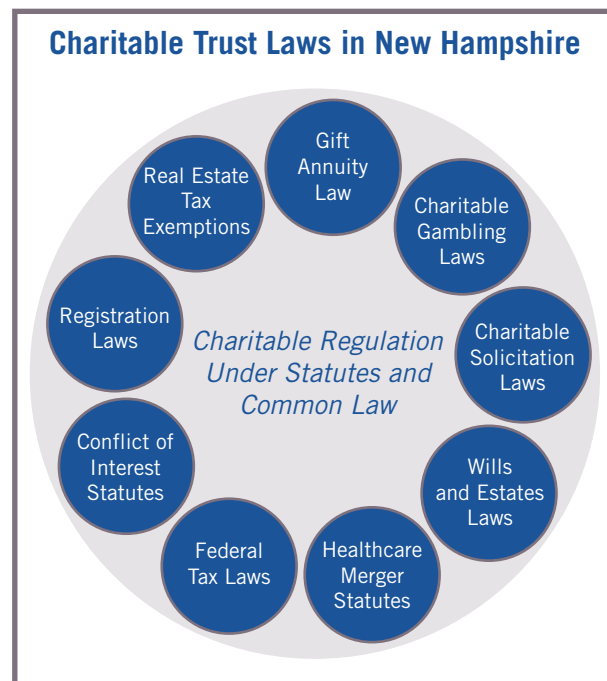
## Major Transactions

### Healthcare Issues

The Unit devoted substantial resources during the biennium to a number of nonprofit healthcare entities engaged in restructuring and redirecting their charitable missions, including (1) the affiliation of New London Hospital with Dartmouth Alliance; (2) the restructuring of Hillcrest Terrace and Pearl Manor, facilities that provide independent living, assisted living and nursing care to the elderly; and (3) monitoring the post-merger financial condition of the Lakes Region and Franklin Hospitals. The Unit was also actively involved in the Healthcare Decisions Coalition that reviewed both the living wills and healthcare directives in this state and recommended legislative action.

### Other Charitable Transactions

The Unit is mandated to appear as a necessary party in the ten Probate Courts in New Hampshire on charitable trust issues. During the reporting period, a number of these cases involved novel or significant issues, including the following: (1) the sale of the assets of St. Francis Xavier Catholic Church in Nashua. (2) Voices United in Truth, a case in Portsmouth involving charitable assets and alleged breaches of fiduciary duties; (3) Advanced Marketing Consultants, a case involving fundraising professionals and compliance with New Hampshire solicitation statutes; (4) New Hampshire Institute of Art/Settlement House, involving the dissolution of the Settlement House organization and the



transfer of the entity's building to the New Hampshire Institute of Art; (5) Barnard Free School (a cy pres of the original, but now obsolete, Barnard School building and rental to the Town of South Hampton; (6) Andrew Downes Estate (mediation of issues involving trust and estate documents resulting in \$10,100 being donated to the Salvation Army); and (7) Merriman Estate/Dresden School District (gift given to the District to construct athletic fields).

### Technology

The Unit has installed the FileNet system and is now in the process of scanning financial reports into the Unit's database. The ultimate goal of the FileNet system is to make scanned images of the financial reports, community benefits reports, and other information relating to charitable organizations available to the public on the Internet. The Unit has two additional information technology projects in process: (1) The NASCONet system that is being designed as an interactive informational site for and about charitable organizations and fundraising in the United States. Development of NASCONet has been made

possible through a grant from the United States Department of Commerce; and (2) the Fed/State Retrieval Project representing collaboration between state charity officials and the Internal Revenue Service for the purpose of developing a system which will permit the electronic filing of registration and reporting forms by charitable organizations on a state and national level.

### **Legislative Initiatives**

The Unit was involved in the working group that prepared a major rewriting of the state's trust laws (the Uniform Trust Code) that was enacted, effective 2004. The Unit was also involved in the End-of-Life work group established by the National Association of Attorneys General (NAAG) and participated in the Healthcare Directives Coalition mentioned earlier. Finally, in 2004 the Legislature enacted a statute requiring that audited financial statements be submitted to the Unit annually by those charities with revenue of \$1,000,000 or more. The Unit prepared a mailing to approximately 500 such organizations, advising them of the new legislative mandate and providing guidance to help those entities comply.

### **Interagency Collaboration**

The Unit continues to collaborate with the Department of Health and Human Services in identifying emerging trends in public health care in the state. This Interagency Work Group is now in its fifth year of the collaborative effort; and it recently received a major grant to help implement the community benefits statute.

### ***Civil Enforcement.***

The Unit has the power under RSA 7:24 and 7:25 to issue Notices to Attend Investigation whenever a question arises regarding the operation of a char-

ity. During the biennium, the Unit issued 31 Notices and conducted 16 hearings, for a variety of reasons, including failure to register or failure to report or failure to comply with RSA 31:28 or 287: D-5. The Unit referred 6 cases to the Criminal Bureau during the relevant period, resulting thus far in one indictment.

The Unit's work includes enforcement of the charitable solicitation law. During fiscal year 2005, the Unit reviewed 385 solicitation notices and registered 175 professional fundraisers. During fiscal year 2004, the Unit reviewed 396 solicitation notices and registered 163 professional fundraisers.

### ***Registration and Licensing***

In fiscal year 2005, the Unit collected \$411,433 in registration and filing fees from charitable trusts and \$126,275 in filing fees from professional fundraisers. In fiscal year 2004, the Unit collected \$389,890 in registration and filing fees from charitable trusts and \$123,263 in filing fees from professional fundraisers.

By the end of the reporting period, there were 5,811 charities and 500 testamentary trusts registered with the Unit. During fiscal year 2004, the Unit reviewed 4,108 annual reports filed by charities and 365 probate accounts filed by testamentary trusts. During this period, reports were received from the 243 towns and cities having custody of trust funds for the benefit of cemeteries, libraries, parks, and other public purposes. These reports were reviewed to ensure compliance with applicable statutes.

The Unit works with the Pari-Mutuel Commission to enforce the Bingo and Lucky 7 statutes. As part of its application review, the Commission ensures the charities involved are registered

with the Unit. This involves monthly reports from the Unit to the Commission and frequent telephone contact between the two state entities.

In 1998, RSA 287-D was amended to include the Attorney General in the process of issuing games of chance permits. During fiscal year 2004, the Unit reviewed 111 applications filed pursuant to RSA 287-D and issued 106 letters of approval. During fiscal year 2005, the Unit reviewed 225 new applications and issued 225 letters of approval.

### ***Litigation and Estates.***

The Director is a necessary party in any litigation involving charitable trusts. During fiscal year 2004, the Unit opened 43 cases. In fiscal year 2005, 72 new cases were opened. These cases range from extensive involvement by the Unit to monitoring the case for status and developments. They include reformation of trust instruments, removal of trustees, determination of beneficiaries, petitions for cy pres, and investigations into allegations of wrongdoing by charities and their officers, directors and professional fundraisers, as well as the various cases mentioned earlier in this report.

Pursuant to statutes and court rules, the ten Probate Courts send the Unit a copy of any will that mentions a charity or trust. These wills are reviewed and information is entered into the Unit's database. When the estate is closed and distributions are made to the charities, that information is also entered into the database, making it easier to retrieve financial information as well to satisfy requests from charities regarding their responsibilities in holding trust funds. In fiscal year 2005, the Unit processed 307 wills and recorded \$28,603,042 in bequests to charity.



### **Preserving New Hampshire Traditions**

The Poore Family Foundation is a 501(c)(3) organization that was created in July 1978, with the charitable purpose of preserving the traditional values and way of life of the settlers of the headwaters of the Connecticut River Valley. J.C. Kenneth Poore gave his homestead, barn, farm machinery, tools and 100 acres of land to the Foundation. The Foundation has turned the premises into a museum depicting what life was like for the early settlers. Many events, including school tours, apple cider pressings, and ice cream socials take place in these old buildings. The Poore Family Foundation may be accessed at [www.poorefamily.homestead.com](http://www.poorefamily.homestead.com).